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OFFICE OF PETITIONS

In re Application of :
Jih Chung Chiang, et al. :
Application No. 10/045,379 :
Filed: January 15, 2002 :
Attorney Docket No. 12684 B :

DECISION DISMISSING
PETITION

This is a decision on the petition filed January 6, 2005, requesting that the above-identified application be accorded a filing date of November 19, 2001, rather than the presently accorded date of January 15, 2002.

The petition is **DISMISSED**.

Petitioner requests that this application be accorded a filing date of November 19, 2001. Petitioner asserts that the package in question was filed via First Class Mail instead of Express Mail because of the interruption of mail service to the USPTO in November 2001. Petitioner states that the mail service was suspended on November 16, 2001 and that an alternative mailing procedure was not provided until November 20, 2001 (one day after the mailing of the package in question.)

Paragraph (a) of 37 CFR 1.10 states that:

“Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the “date-in” on the “Express mail” mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

Petitioner is incorrect that an alternate mailing procedure was not provided until November 20, 2001, one day after petitioner mailed the patent application.

In the Official Gazette of October 9, 2001, a Notice was posted stating in pertinent part:

“In some cases, due to the recent emergency, certain post offices are refusing to accept the deposit of mail for delivery by Express Mail service. The USPTO is also designating this interruption in the Express Mail service of the USPS as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 C.F.R. 1.6(e). In addition, if a party attempts to deposit correspondence for delivery to the USPTO with the USPS by Express Mail under 37 CFR 1.10 (“Express Mail Post Office to Addressee”) and the USPS refuses to accept such correspondence, the party is advised to take the following action: mail the correspondence to the USPTO by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail. The statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence. The statement must be signed in accordance with 37 CFR 10.18. The correspondence should be mailed as set out in 37 CFR 1.1(a) and include the special box designation: BOX FILING DATE.” (Emphasis added)

A review of the file record shows that petitioner did not follow the guidelines set forth in the aforementioned Notice of October 9, 2001, which was published **prior** to the mailing of the application. Additionally, there is no statement present in the application file from the person, who originally attempted to deposit the correspondence with the USPS as Express Mail that the USPS refused to accept the correspondence. In fact, there is no indication, based on the statements provided in the petition, that an attempt to deposit the application as Express Mail was made. Moreover, the envelope that petitioner used to mail the application (a copy of which is enclosed herewith) via First Class Mail was not addressed “BOX FILING DATE” in accordance with the Notice, but was addressed as:

“Commissioner of Patent & Trademarks
Washington, DC 20231

Attention: BOX PATENT APPLICATION FEE” (Emphasis added)

Additionally, the Official Gazette Notice dated November 20, 2001, states:

“In some cases, due to the recent emergency, certain post offices are refusing to accept the deposit of mail for delivery by Express Mail service. The USPTO is also designating this interruption in the Express Mail service of the USPS as a postal service interruption within the meaning of 35 U.S.C. 21(a) and 37 CFR 1.6(e). In addition, if a party attempts to deposit correspondence for delivery to the USPTO with the USPS by Express Mail under 37 CFR 1.10 (“Express Mail Post Office to Addressee”) and the USPS refuses to accept such correspondence, the party is advised to take the following action: mail the correspondence to the USPTO by registered or first class mail with a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail. The statement must indicate the date on which the person attempted to deposit the correspondence with the USPS and that the USPS refused to accept the correspondence. The statement must be signed in accordance with 37 CFR 10.18. The correspondence should be mailed as set out in 37 CFR 1.1(a) and include the special box designation: BOX FILING DATE.

If a party can demonstrate that due to extraordinary circumstances the above procedures could not be followed, it will be necessary to file a petition under 37 CFR 1.183 (patent matter) or 2.146(a)(5) and 2.148 (trademark matter) to waive the requirements of 37 CFR 1.10 to permit the USPTO to accord the correspondence a filing date as of the date that Express Mail deposit was attempted. **Such a petition must be accompanied by a statement by the person who originally attempted to deposit the correspondence with the USPS by Express Mail, stating the date that the deposit was attempted and that the USPS refused to accept the correspondence, and be signed by such person subject to the conditions prescribed in 37 CFR 10.18.**

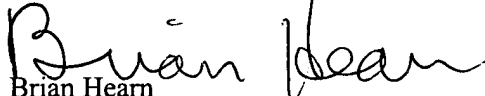
Certificates of Mailing Under 37 CFR 1.8

Parties submitting correspondence to the USPTO are reminded that 37 CFR 1.8 (certificate of mailing or transmission practice) does not provide for according a filing date as of the date of deposit with the USPS to correspondence submitted under 37 CFR 1.8. Therefore, it would be inappropriate to file a petition under 37 CFR 1.183 or 2.146(a)(5) and 2.148 to waive the requirements of 37 CFR 1.8."
(Emphasis added)

In view of the above, the filing date of the application remains. While the Office is sympathetic to petitioner's situation, the failure to comply with the established procedures does not exhibit an "extraordinary circumstance." Therefore, it would be inappropriate to grant the relief requested in the present petition.

Telephone inquiries concerning this matter may be directed to Marianne Jenkins at (571) 272-3223.

This application will be referred to Technology Center 3700 for further examination with the presently accorded filing date of January 15, 2002.


Brian Hearn
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Office of the Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Envelope Used to Mail Patent Application